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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 UNITED STATES OF AMERICA,

11 Plaintiff-Respondent,

12 v.

13 QUINTON WILLIAMS,

14 Defendant-Petitioner.
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Case No. 2:03-CR-0046-KJD-RJJ
2:06-CV-0038-KJD-RJJ

ORDER

16 Presently before the Court is Petitioner's Motion for Certificate of Appealability (#72). A
17 petitioner must obtain a certificate of appealability ("COA") in order to appeal a final order denying a
18 habeas corpus petition arising under 28 U.S.C. § 2255. See 28 U.S.C. § 2253(c)(1)(B). A court may
19 issue a COA when "the applicant has made a substantial showing of the denial of a constitutional
20 right." Id. § 2253(c)(2). To obtain a COA, a petitioner must meet the "substantial showing"
21 standard with respect to each issue he or she seeks to raise on appeal. See id. § 2253(3); Lambright
22 v. Stewart, 220 F.3d 1022, 1024 (9th Cir. 2000). When the court has denied a petitioner's claims on
23 the merits, the petitioner must demonstrate that jurists would find the district court's assessment of
24 the claims debatable or wrong. See Slack v. McDaniel, 529 U.S. 473, 483-84 (2000).
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1 On May 1, 2006, the Court denied Petitioner's motion to vacate, set aside, or correct sentence
 2 on the merits. In his application for a certificate of appealability, Petitioner seeks to certify the
 3 following two issues for appeal:

4 (1) Whether his counsel's failure to procure his presence at the deposition of a material
 5 witness constituted ineffective assistance of counsel; and

6 (2) Whether his counsel's failure to raise the use of an unavailable witness's grand jury
 testimony on appeal constituted ineffective assistance of counsel.

7 Reasonable jurists would not find the Court's assessment of Petitioner's first claim debatable or
 8 wrong. The Ninth Circuit Court of Appeals addressed the underlying issue on the merits on direct
 9 appeal and concluded that Petitioner had waived his appearance by his own conduct, and that his
 10 Sixth Amendment rights were not violated.

11 However, despite rejecting Petitioner's arguments when it dismissed Petitioner's § 2255
 12 petition on the second claim, the Court finds that jurists of reason would find it debatable whether his
 13 counsel's failure to raise the use of an unavailable witness's grand jury testimony on appeal
 14 constituted ineffective assistance of counsel.

15 By finding that jurists of reason would find the correctness of the ruling on the merits
 16 debatable, the court must now take a "quick look" at the face of the § 2255 petition to determine
 17 whether the petitioner has facially alleged the denial of a constitutional right. See Lambright, 220
 18 F.3d at 1026. The Court finds that, on the face of the petition, Petitioner alleges the denial of his
 19 constitutional rights. Petitioner alleges that he was denied his Sixth Amendment right to the
 20 effective assistance of counsel when counsel failed to raise on direct appeal the Confrontation Clause
 21 claims arising from the use of Saniqua Nichols' grand jury testimony against Petitioner.

22 Accordingly, IT IS HEREBY ORDERED that Petitioner's Application for Certificate of
 23 Appealability (#161) is **GRANTED in part and DENIED in part;**

24 IT IS FURTHER ORDERED that the COA is **DENIED** as to the first claim raised by
 25 Petitioner;
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1 IT IS FURTHER ORDERED that the COA is **GRANTED** as to the second claim raised by
2 Petitioner, namely:

3 (2) Whether his counsel's failure to raise on appeal the use of an unavailable witness's grand
4 jury testimony constituted ineffective assistance of counsel.

5 DATED this 21st day of July 2006.

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Kent J. Dawson
United States District Judge